

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



IN THE MATTER OF ST GREGORY'S ARMENIAN SCHOOL INC [2020] NSWSC 1124

Supreme Court of New South Wales, Black J, 24 August 2020

Costs of cost applications of a failed objection to a winding up application of an incorporated association.

Key words: Incorporated Associations, New South Wales, Costs

1. This matter was decided on the papers and is about costs of numerous applications. The latest being [*John Mcinerney and Phillip Campbell-Wilson in their capacity as Liquidators of St Gregory's Armenian School Inc v Michael Ghougassian & Anor*](#) [2020] NSWSC 197.
2. In 2010, the court ordered that St Gregory's Armenian School Inc (the Association) be wound up under section 51(1) *Associations Incorporation Act 1984* (NSW) (the 1984 Act) and appointed liquidators. At the time of the winding-up, the Association was insolvent and unable to pay its debts as and when they fell due. There were only six pupils, most of whom were relatives of the Ghougassians. The Ghougassians have had acrimonious dealings with the successive liquidators of the Association through several court proceedings. In one case, they received a partial costs order which they did not pursue.
3. In 2015, they brought an application for an order under section 482 of the *Corporations Act 2001* (Cth) that the winding up of the Association be terminated and that five named persons including the Ghougassians be appointed as directors of the Association. This was not successful, and they were ordered to pay costs. They did not pay the costs and the liquidators applied by notice of motion for the issue of a writ for the levy of property of each of the Ghougassians. The writs were granted.
4. The Ghougassians sought a stay of enforcement of the writs until the surplus in the liquidation of St Gregory's Armenian School Inc (in liq) was distributed in accordance with section 53 of the 1984 Act. The Ghougassians claimed that they would be able to pay the judgment once the surplus in the Association was distributed. There was also evidence that the school owed them money.
5. The Court found that there is no arguable claim to set aside the costs order in the 2015 proceedings either on the ground that the order was made irregularly or against good faith. However, in the interests of justice a partial stay of the judgment debt was ordered, subject to a condition that the Ghougassians undertake to take all necessary

steps to commence and pursue with due expedition the assessment of the costs order in their favour in past proceedings.

6. The Ghougassians and the liquidators subsequently agreed to discontinue the costs application and have the remaining costs issues decided by the Court. Because of the Ghougassians' claims against the liquidators had no evidentiary foundation and were "hopeless" for legal and factual reasons, an order for indemnity costs was made by the Court.

IMPLICATIONS



The full nature of the previous proceedings can be found in:

Sutherland v Ghougassian [2012] NSWSC 125; *Sutherland v Ghougassian (No 2)* [2012] NSWSC 325; *Sutherland v Ghougassian (No 3)* [2012] NSWSC 334; *Ghougassian v Sutherland* [2013] NSWCA 168; *Re St Gregory's Armenian School Inc* [2015] NSWSC 1042; *Re St Gregory's Armenian School Inc* (2015) 109 ACSR 27; [2015] NSWSC 1465; *Re St Gregory's Armenian School Inc* [2015] NSWSC 1701; *St Gregory's Armenian School Inc; Ghougassian v Arnautovic in his capacity as Liquidator of St Gregory's Armenian School Inc* [2018] NSWSC 1022; *McInerney and Campbell-Wilson in their capacity as liquidators of St Gregory's Armenian School Inc v Ghougassian* [2020] NSWSC 197 and *Re St Gregory's Armenian School Inc* [2020] NSWSC 785.

VIEW THE CASE



This case may be viewed at <http://www.austlii.edu.au/au/cases/nsw/NWSC/2020/1124.html>

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